

IN THE MATTER OF

SERVICE CORPORATION INTERNATIONAL

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket C-3372. Complaint, Feb. 25, 1992--Decision, Feb. 25, 1992*

This consent order requires, among other things, a Houston, Texas, based corporation to divest, within twelve months, four Pierce Brothers funeral homes, and, for ten years, to obtain prior Commission approval before acquiring any additional funeral homes in the San Bernardino/Riverside, California, areas.

*Appearances*

For the Commission: *Katharine B. Alphin* and *John D. Jacobs*.

For the respondent: *Michael Byowitz, Wachtell, Lipton, Rosen & Katz*, New York, N.Y. and *Marcel Gremillow*, Service Corporation International, Houston, TX.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Service Corporation International, a corporation, hereinafter sometimes referred to as respondent, has entered into an agreement with Pierce Brothers Holding Company, a corporation, that violates said Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

## I. DEFINITIONS

1. For the purposes of this complaint, the following definitions shall apply:

a. "*SCI*" means the respondent Service Corporation International, its subsidiaries, divisions, groups controlled by SCI, successors and assigns, and their respective directors, officers, employees, agents, and representatives.

b. "*Pierce Brothers*," means Pierce Brothers Holding Company, its subsidiaries, divisions, groups controlled by Pierce Brothers, successors and assigns, and their respective directors, officers, employees, agents, and representatives.

c. "*Funerals*" means a group of services provided at the death of an individual, the focus of which is some form of commemorative ceremony of the life of the deceased at which ceremony the body is present; this group of services ordinarily includes, but is not limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and viewing, for the conduct of a funeral service, and for the display of caskets and outside cases; and the arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

## II. THE RESPONDENT

2. Respondent SCI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1929 Allen Parkway, Houston, Texas.

3. Pierce Brothers is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 10621 Victory Boulevard, North Hollywood, California.

4. SCI and Pierce Brothers are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

### III. THE AGREEMENT

5. On or about September 27, 1991, SCI entered into an Agreement and Plan of Merger with Pierce Brothers, in which Pierce Brothers would be merged into Pierce Brothers Acquisition Corp., a wholly-owned subsidiary of SCI. Pierce Brothers shareholders would receive cash and SCI common stock.

### IV. THE RELEVANT MARKET

6. For purposes of this complaint, the relevant line of commerce in which to analyze the proposed acquisition of Pierce Brothers is the provision of funerals.

7. For purposes of this complaint, the relevant section of the country in which to analyze the proposed acquisition is the following: all or part of the cities of Fontana, Rialto, Colton, San Bernardino, Loma Linda, Grand Terrace and Redlands, and the community of Bloomington, all located in San Bernardino County, California; and the city of Riverside and the community of Rubidoux, both located in Riverside County, California; and their immediate environs (hereinafter "San Bernardino/Riverside").

8. In the relevant section of the country described in paragraph 7, the industry providing funerals is concentrated, whether measured by the Herfindahl-Hirschmann Index or by two-firm or four-firm concentration ratios.

9. Entry into the relevant market is difficult.

10. In the relevant market both SCI and Pierce Brothers own funeral establishments and are actual competitors in the provision of funerals. Pierce Brothers is the largest firm and SCI the second largest firm providing funerals in the San Bernardino/Riverside, California area.

### V. EFFECTS OF THE ACQUISITION

11. The effects of the acquisition may be to substantially lessen competition in the relevant market in violation of Section 7 of the

Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating actual competition between SCI and Pierce Brothers; and
- b. By tending to create a dominant firm in the relevant market.

#### VI. VIOLATION CHARGED

12. The agreement described above violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and the acquisition described above, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain funeral home acquisitions of Service Corporational International ("SCI"), a corporation, and SCI, having been furnished with a copy of a draft of complaint that the Atlanta Regional Office proposed to present to the Commission for its consideration, and that, if issued by the Commission, would charge Service Corporation International with violations of the Clayton Act and Federal Trade Commission Act; and

Respondent SCI, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that the respondent had violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record

for a period of (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent SCI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1929 Allen Parkway, in the City of Houston, State of Texas.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent, and the proceeding is in the public interest.

#### ORDER

##### I.

As used in this order, the following definitions shall apply:

A. "*SCI*" or "*respondent*" means Service Corporation International, its subsidiaries, divisions, groups and affiliates controlled by SCI, successors and assigns, and their respective directors, officers, employees, agents and representatives.

B. "*Pierce Brothers*" means Pierce Brothers Holding Company, its subsidiaries, divisions, groups and affiliates controlled by Pierce Brothers, successors and assigns, and their respective directors, officers, employees, agents and representatives.

C. "*Funerals*" means a group of services provided at the death of an individual, the focus of which is some form of commemorative ceremony of the life of the deceased at which ceremony the body is present; this group of services ordinarily includes, but is not limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and viewing, for the conduct of a funeral service, and for the display of caskets and outside cases; and the arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

D. "*Funeral establishment*" means the Assets and Businesses of a facility that provides funerals.

E. "*Assets and Businesses*" include assets, properties, business and goodwill, tangible and intangible, utilized by a funeral establishment, including, but not limited to, the following:

1. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;
2. All machinery, fixtures, equipment, furniture, tools and other tangible personal property;
3. All right, title and interest in the trade name of each funeral establishment, *provided that* the trade name "Pierce Brothers" need not be included;
4. All right, title and interest in the books, records and files pertinent to any of the Properties to be Divested.

F. "*Properties to be Divested*" means all of the Assets and Businesses of the following funeral establishments:

1. Cortner-Pierce Brothers Chapel, 221 Brookside Ave., Redlands, CA.
2. Pierce Brothers Ingold Chapel, 8277 Juniper Ave., Fontana, CA.
3. Mark B. Shaw, 1525 N. Waterman Ave., San Bernardino, CA.
4. Rubidoux Mortuary, 6091 Mission Blvd., Riverside, CA.

## II.

*It is ordered*, That, within twelve (12) months after the date this order becomes final, respondent shall divest, absolutely and in good faith, the Properties to be Divested. The Properties to be Divested are to be divested only to an acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestitures required by this order is to ensure the continuation of the Properties to be Divested as ongoing viable enterprises and to remedy the lessening of competition alleged in the Commission's complaint.

## III.

*It is further ordered,* That, pending divestiture, respondent shall maintain the viability and marketability of the Properties to be Divested and shall not cause or permit the destruction, removal, or impairment of any assets or businesses of the Properties to be Divested, except in the ordinary course of business and except for ordinary wear and tear.

## IV.

*It is further ordered,* That:

A. If respondent has not divested the Properties to be Divested as required by paragraph II of this order within twelve (12) months after the date this order becomes final, respondent shall consent to the appointment of a trustee by the Commission to divest the remaining Properties to be Divested. In the event the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondent shall similarly consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to paragraph 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by SCI to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph IV. A. of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld.

The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest the remaining Properties to be Divested.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or by the Court for a court-appointed trustee; *provided, however*, that the Commission or court may only extend the divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities relating to the remaining Properties to be Divested, or any other relevant information, as the trustee may reasonably request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to respondent's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in paragraph II of this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the remaining Properties to be Divested. The divestiture shall be made in the manner set out in paragraph II; *provided, however*, that if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, or other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in a significant part on a commission arrangement contingent on the trustee's divesting the remaining Properties to be Divested.

7. Except in cases of misfeasance, negligence, willful or wanton acts, or bad faith by the trustee, the trustee shall not be liable to respondent for any action taken or not taken in performance of the trusteeship. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this order, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim whether or not resulting in any liability, except to the extent such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith of the trustee.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, respondent shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph IV. A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the remaining Properties to be Divested.

12. The trustee shall report in writing to respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

#### V.

*It is further ordered*, That, respondent shall comply with the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said agreement shall continue in effect until respondent has divested the Properties to be Divested or until such other time as the Agreement to Hold Separate provides.

#### VI.

*It is further ordered*, That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with paragraph II of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with that provision. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestitures required by this order, including the identity of all parties contacted. Respondent also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning the required divestitures.

## VII.

*It is further ordered,* That, for a period of ten (10) years after the date this order becomes final, respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Commission, any assets of or any stock, share capital or equity or other interest in a funeral establishment located within portions of San Bernardino County and Riverside County, being more particularly described as follows: Beginning at the intersection of Interstate 15 and Highland Avenue in San Bernardino County, thence turning southerly along Interstate 15 to its intersection with the Riverside Freeway, Route 91, thence northeasterly along the Riverside Freeway to its intersection with Central Avenue, thence easterly along Central Avenue to its easterly terminus at Alessandro Boulevard, thence easterly to the intersection of Interstate 215 and Route 60, thence easterly along Route 60 to the intersection of Moreno Beach Drive, thence northerly along Moreno Beach Drive to its northern terminus, thence northerly to the intersection of Interstate 10 and Orange Street, thence northerly along Orange Street to its intersection with Boulder Avenue, thence northerly along Boulder Avenue to its Intersection with Highland Avenue, thence westerly along Highland Avenue to its easterly intersection with Route 259, thence westerly along Route 259 to its westerly intersection with Highland Avenue, thence westerly along Highland Avenue to its intersection with Interstate 15 and the point of the beginning; *provided, however,* that this prohibition shall not apply to the construction of new facilities by respondent. The geographic areas defined above are to be interpreted in accordance with the 1990 *Thomas Street Guide and Directory* for each of Riverside County and San Bernardino County.

## VIII.

*It is further ordered,* That, for a period of ten (10) years after the date this order becomes final, notwithstanding the requirements of paragraph VII. hereof, respondent may acquire through default or foreclosure proceedings any interest in a funeral establishment

located in the areas defined in paragraph VII; *provided, however*, that respondent must give the Commission notice of such acquisition within ten (10) days of the acquisition. Within thirty (30) days of such acquisition respondent must apply for Commission approval of the acquisition. If the Commission does not approve the acquisition, respondent shall divest such interest in accordance with the terms of paragraphs II., III., and IV. of this order. From the date of the acquisition until such time as the Commission approves the acquisition or, if the acquisition is not approved, until the interest is divested, respondent shall hold separate, as required by the Hold Separate Agreement attached hereto, any funeral establishment in which such an interest is acquired.

IX.

*It is further ordered*, That, one year after the date this order becomes final and annually thereafter for nine (9) years, and at such other times as the Commission may require, respondent shall file with the Commission a verified written report of its compliance with paragraphs VII. and VIII. of this order. Such reports shall include, but not be limited to, a listing of all acquisitions and the acquired locations' addresses, including but not limited to acquisitions due to default, foreclosure proceedings or purchases in foreclosure, made by respondent during the 12 months preceding the date of the report.

X.

*It is further ordered*, That, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to their principal offices, respondent shall permit any duly authorized representative or representatives of the Commission:

A. Access, during the office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the

possession or under the control of respondent relating to any matters contained in this order;

B. Upon five (5) days' notice to respondent and without restraint or interference therefrom, to interview officers or employees of respondent, who may have counsel present, regarding such matters.

## XI.

*It is further ordered*, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its organization, such as dissolution, assignment or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries, or any other change, that may affect compliance obligations arising out of this order.

## APPENDIX I

### AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate (the "Agreement") is by and between Service Corporation International ("SCI"), a corporation organized and existing under the laws of the State of Texas, with its principal executive offices located at 1929 Allen Parkway, Houston, Texas, and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

#### Premises

*Whereas*, on or about September 27, 1991, SCI entered into an Agreement and Plan of Merger with Pierce Brothers Holding Company ("Pierce Brothers"), in which (1) Pierce Brothers would be merged into Pierce Brothers Acquisition Corp., a wholly-owned subsidiary of SCI, and (2) Pierce Brothers shareholders would receive cash and SCI common stock (hereinafter the "Acquisition"); and

*Whereas*, both Pierce Brothers and SCI own funeral establishments that provide funerals to consumers; and

*Whereas*, the Commission is now investigating the Acquisition to determine if the Acquisition would violate any of the statutes enforced by the Commission; and

*Whereas*, if the Commission accepts the Agreement Containing Consent Order (the "SCI/Pierce Consent Agreement"), the Commission must place the SCI/Pierce Consent Agreement on the public record for public comment for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

*Whereas*, the Commission is concerned that if an understanding is not reached preserving the *status quo ante* and holding separate the assets and businesses of certain Pierce Brothers funeral establishments listed in Exhibit A attached hereto and made a part hereof (hereinafter "Hold Separate Assets") until the divestitures contemplated by the SCI/Pierce Consent Agreement have been made, divestitures resulting from any proceeding challenging the legality of the Acquisition might not be possible or might be less than an effective remedy; and

*Whereas*, if the Commission finally accepts the order contained in the SCI/Pierce Consent Agreement, SCI agrees, for a period of 10 years after the date the order becomes final, to notify the Commission of the acquisition, by default or foreclosure proceedings, of any interest in a funeral establishment in three specified geographic areas and to hold such funeral establishment separate until such time as the Commission approves the acquisition or the interest is divested; and

*Whereas*, the purposes of this Agreement are to: (1) preserve the Hold Separate Assets as viable independent businesses pending the divestitures described in the SCI/Pierce Consent Agreement; (2) preserve the Commission's ability to require the divestitures of the funeral establishments required by the SCI/Pierce Consent Agreement; and (3) remedy any anticompetitive aspects of the Acquisition; and

*Whereas*, SCI's entering into this Agreement shall in no way be construed as an admission by SCI that the Acquisition is illegal; and

*Whereas*, SCI understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

*Now, therefore*, the Parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the SCI/Pierce Consent Agreement, it will not seek further relief from SCI with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the SCI/Pierce Consent Agreement to which it is annexed and made a part thereof and any order issued against SCI, as follows:

1. SCI agrees to execute and be bound by the SCI/Pierce Consent Agreement.

2. SCI shall hold the Hold Separate Assets separate and apart as follows: (i) the funeral establishments to be divested under paragraph II of the order contained in the SCI/Pierce Consent Agreement from the date this agreement is accepted until the first to occur of (a) ten business days after the Commission withdraws its acceptance of the SCI/Pierce Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules or (b) the date the divestitures required by the order contained in the SCI/Pierce Consent Agreement are accomplished; and (ii) any funeral establishments acquired by SCI through default or foreclosure and subject to paragraph VIII of the order contained in the SCI/Pierce Consent Agreement from the date SCI acquires any interest through default or foreclosure in any such funeral establishment until (a) the Commission grants approval of the acquisition or (b) any divestiture ordered by the Commission is accomplished. SCI's obligation to hold the Hold Separate Assets separate and apart shall be on the following terms and conditions and for the periods set forth in Exhibit A:

a. SCI shall hold separate and apart the Hold Separate Assets.

b. Except as provided herein and as is necessary to assure compliance with this Agreement and the Consent Order, SCI shall not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or any of their operations or businesses.

c. SCI shall cause the Hold Separate Assets to continue using their present names and trade names, and shall maintain and preserve

the viability and marketability of each of the Hold Separate Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability.

d. SCI shall refrain from taking any actions that may cause any material adverse change in the business or financial conditions of the Hold Separate Assets.

e. SCI shall not change the composition of the management of the Hold Separate Assets, except that SCI may fill vacancies and remove management for cause.

f. SCI shall maintain separate financial and operating records and shall prepare separate financial statements for the Hold Separate Assets and shall provide the Commission with quarterly and annual financial statements for each funeral establishment within ten days of their availability.

g. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to dispose of assets, SCI shall not receive or have access to, or the use of, any of the Hold Separate Assets' "material confidential information" not in the public domain, except as such information would be available to SCI in the normal course of business if the acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to SCI from sources other than Pierce Brothers, and includes but is not limited to pre-need customer lists, prices quoted by suppliers, or trade secrets.)

h. All earnings and profits of the Hold Separate Assets shall be held separate. If necessary, SCI shall provide any or all of the Hold Separate Assets with sufficient working capital to operate at their current levels.

i. SCI shall refrain from, directly or indirectly, encumbering, selling, disposing of, or causing to be transferred any assets, property or business of the Hold Separate Assets, except that the Hold Separate Assets may advertise, purchase merchandise and sell or otherwise dispose of merchandise in the ordinary course of business, and SCI may sell or otherwise dispose of assets, property or business

to accomplish the divestitures required by any order issued against SCI.

3. The parties agree that, if the Commission finally approves and issues the order in the SCI/Pierce Consent Agreement this Agreement shall remain in effect until ten (10) years after the date said order becomes final.

4. Should the Federal Trade Commission seek in any proceeding to compel SCI to divest itself of the shares of Pierce Brothers stock that SCI may acquire, or to compel SCI to divest any assets or businesses of Pierce Brothers that it may hold, or to seek any other injunctive or equitable relief, SCI shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. SCI also waives all rights to contest the validity of this Agreement.

5. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to SCI made to its principal office, SCI shall make available to any duly authorized representative or representatives of the Commission:

a. All books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of SCI relating to any matters contained in this Agreement, for inspection and copying during office hours and in the presence of counsel; and

b. Upon five (5) days notice to SCI, and without restraint or interference from SCI, officers or employees of SCI, who may have counsel present, for interviews regarding any such matters.

This agreement shall not be binding until approved by the Commission.

## EXHIBIT A

HOLD SEPARATE ASSETS AND TIME PERIOD  
OF HOLD SEPARATE OBLIGATIONS

1. The following six funeral establishments shall be held separate until the divestiture of Cortner-Pierce Brothers Chapel, Pierce Brothers Ingold Chapel, Mark B. Shaw, and Rubidoux Mortuary pursuant to the order as is set forth in the SCI/Pierce Consent Agreement:

Cortner-Pierce Brothers Chapel  
221 Brookside Ave.  
Redlands, CA 92373

Pierce Brothers Ingold Chapel  
8277 Juniper Ave.  
Fontana, CA 92335

Mark B. Shaw  
1525 N. Waterman Ave.  
San Bernardino, CA 92404

McNearney-Pierce Brothers Mortuary  
130 S. Willow Ave.  
Rialto, CA 92376

Pierce Brothers Crestlawn Mortuary  
11500 Arlington Ave.  
Riverside, CA 92505

Rubidoux Mortuary  
6091 Mission Blvd.  
Riverside, CA 92509

2. Any funeral establishment located in the area described in paragraph VII of the SCI/Pierce Consent Agreement, in which funeral establishment SCI acquires an interest through default or foreclosure, shall be held separate until either the Commission finally approves the acquisition of that funeral establishment pursuant to paragraph VIII of the SCI/Pierce Consent Agreement or the funeral establishment is divested.

## IN THE MATTER OF

## EXCELL MORTGAGE CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
TRUTH IN LENDING ACT, REGULATION Z, AND SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT*Docket C-3371. Complaint, Feb. 26, 1992--Decision, Feb. 26, 1992*

This consent order prohibits, among other things, a New Jersey corporation to accurately calculate and disclose the annual percentage rate, finance charge, payment schedule and other information required by Regulation Z. The order also requires respondent to make adjustments to the accounts of consumers extended an adjustable rate mortgage on or after January 1, 1987, and before January 1, 1990, and who had an open loan as of April 1, 1991, to whom it disclosed annual percentage rates (APRs) that were miscalculated by more than 1/4 of one percentage point below the APR determined in accordance with Regulation Z.

*Appearances*

For the Commission: *Carole L. Reynolds* and *Rolando Berrelez*.

For the respondent: *Morton R. Covits* (President), Englewood Cliffs, N.J.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Excell Mortgage Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1667, as amended, and its implementing Regulation Z, 12 CFR Part 226, and the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45-58, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint and alleges:

PARAGRAPH 1. Excell Mortgage Corporation is a corporation organized, existing and doing business under and by virtue of the